



Bankruptcy Clerk's Newsletter

Volume I
February 2000

AMENDMENTS TO BANKRUPTCY RULES STAY ENFORCEMENT OF ORDERS

On December 1, 1999, amendments to the following Federal Bankruptcy Rules took effect: 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006 and 9014. The amendments govern all proceedings commenced on or after December 1, 1999 and when just and practicable, to all pending proceedings.

Amendments to rules 3020, 4001, 6004 and 6006 stay for 10 days, unless the court rules otherwise, the following:

- Order confirming chapter 11 plan
- Order granting relief from stay
- Orders authorizing the use, sale or lease of property, other than cash collateral
- Order authorizing the trustee to assign an executory contract or unexpired lease

Parties wishing for immediate authority to enforce these orders should make a request in the originating motion and include the language in a proposed order.

Amended Rule 1017(c) now requires notice of a motion to dismiss for failure to file schedules to be served on just the debtor, trustee and any entity directed by the court.

Amended Rule 2002 is housekeeping to remain in compliance with Amended Rules 1017(c) as stated above.

Amended Rule 1019 clarifies that post-petition pre-conversion administrative claims must be filed in the form of a request, rather than through a proof of claim.

Amended Bankruptcy Rule 7001 removes the requirement of an adversary proceeding for injunctive relief, when such relief is provided for in a plan.

NOTICES TO THE STATE

As of January 1, 2000 the clerks office discontinued automatic noticing to the State of North Dakota. Previously the Tax Commissioner had accepted the responsibility on behalf of all state agencies of reviewing each 341 meeting and discharge notice. The Tax Commissioner will no longer receive each notice. If a state agency is a creditor, or potential creditor of your client, please make sure that they appropriate organization is included on your creditor list.

FEE I NCREASESES

On November 29, 1999, President Clinton signed an appropriations act Public Law No. 106-113 which includes a \$25.00 increase in the overall filing fees for Chapter 7 and Chapter 13 bankruptcy cases. The new fees are \$200.00 for a Chapter 7 case and \$185.00 for a Chapter 13 case. These fee increases **became effective** on December 29, 1999. All Chapter 7 or Chapter 13 cases received in the bankruptcy clerks office on and after December 29, 1999 will be subject to the new fees. See attached Fee Schedule for a list of all fees.

NEW ADDRESS AND PHONE NUMBERS AS OF JANUARY 21, 2000

As of January 21, 2000, the Office of the United States Attorney in Fargo, North Dakota, has moved from the temporary location in the Post Office to their permanent quarters:

Office of United State Attorney
Quentin N. Burdick United States Courthouse
655 First Avenue North, Suite 250
Fargo, North Dakota 58102-4932
Telephone Number: 701-297-7400
Fax Number: 701-297-7405
Hearing Impaired: 701-297-7444

PROBATION AND PRETRIAL SERVICES

As of February 15, 2000, the Probation and Pretrial Services will be at the following address:

U.S. Probation & Pretrial Services Office
Quentin N. Burdick U.S. Courthouse
655 1st Ave. N., Suite 370
Fargo, ND 58102-4932

All telephone and fax numbers remain the same. Please use above address as there will no longer be a post office box.

FAST FACTS

Money I lls

| | |
|--|-----------|
| Number of Americans who declared bankruptcy in 1987: | 495,553 |
| Number of Americans who declared bankruptcy in 1997: | 1,350,188 |

- American Bankruptcy Institute



Senate Passes Bankruptcy Reform Legislation

From Bruce Gering - Assistant United States Trustee

If you are tired of dealing with the same old problems in your bankruptcy practice, cheer up—soon we will all have a completely new set of bankruptcy problems to deal with. The Senate passed its version of the bankruptcy reform bill on February 2, 2000. The House version was passed last May. The two bills must now go to a conference committee to work out the differences in them, and then back to both bodies for passage. How soon this will happen is still unknown, but it seems fairly certain that some sort of reform legislation will pass this year. Both bills would make sweeping changes in the bankruptcy laws, so it is probable that the final version that comes out of the conference committee will also bring drastic changes to the system.

One of the changes that may have great impact is referred to as “needs based bankruptcy”. This measure is designed specifically to reduce the number of chapter 7 filings by raising new eligibility standards. In the latest Senate bill, a debtor would be presumed to be abusing the bankruptcy system if, after deducting monthly expenses from monthly income, and multiplying the remaining amount times 60, that amount is not less than the lesser of 25% of the debtor’s unsecured nonpriority debt, or \$15,000. The expenses that are allowed to be deducted are those as calculated and issued by the Internal Revenue Service, plus payments for secured debts that are calculated as the sum of the total of all amounts scheduled as due to secured creditors in each month of the 60 months following the date of the petition divided by 60; and the debtor’s total amount of all priority claims divided by 60. It appears to this writer that these expenses would be less than those that are commonly taken by debtors in present case filings in North Dakota. The disposable income threshold of \$250 per month or less ($\$15,000 \div 60$) is less than this office presently uses in its 707(b) analysis. Therefore, although there are some circumstances which a debtor can use to rebut the presumption of abuse, it appears that a number of debtors who are presently eligible for chapter 7 relief would not be eligible under the new law. If a debtor is found to be ineligible, and the court determines that the debtor’s attorney’s action in filing the case under chapter 7 was frivolous, the debtor’s attorney will be ordered to reimburse the trustee for his costs in prosecuting the motion to dismiss.

The new law also requires that the debtors receive credit counseling prior to filing a petition, and complete an instructional course concerning personal financial management prior to being awarded a discharge. These requirements have some loopholes so that debtors in need of bankruptcy relief will be able to file if the counseling services and education courses are not available, but eventually, all debtors will be required to participate.

Finally, the new law also changes provisions relating to the discharge of debts. The time between eligibility for discharge in successive filings is extended from the present six years to eight; and there is a presumption of fraud for unsecured debts of \$250 or more that are incurred for “luxury goods” or cash advances within the 90 days before the filing date.

There are many other changes proposed in the two bills. In general, the Senate bill is more debtor-friendly than the House bill. If you want to know more details, you can obtain further information from the American Bankruptcy Institute web site at www.abiworld.org

TIPS FROM THE CLERK

By Ellen A. Johanson, Clerk, U.S. Bankruptcy Court

In the past few months we have had several documents filed with two or more separate prayers, two or more actions to be taken, and two or more unrelated or not-closely-related parties. Ordinarily Bankruptcy Judge Hill determines that these should not be filed. On occasion, due to the time or nature, he will agree to the filing and when necessary a hearing, but with reservation.

From the Court's perspective, these matters are difficult to decipher and to actually consider. Usually two separate hearings must be scheduled. From the clerk's perspective the documents are usually difficult to schedule for hearing and to track. Here are some examples.

A frequently filed document is titled "Motion for Relief from Stay or in the Alternative for Dismissal." Here are the differences. A motion for relief from stay

- is referenced under 11 USC 362,
- is an issue between the debtor, trustee, U.S. Trustee and ordinarily the associated secured creditors,
- requires a \$75.00 filing fee,
- is noticed by a limited notice with opportunity for hearing within 15 days, and
- must be considered by the Court within 30 days or the stay is automatically lifted.
- Usually no hearing is needed.

On the other hand, a motion to dismiss

- is referenced under 11 USC 707, 1112, 1208 or 1307,
- is usually an issue between the debtor, trustee, U.S. Trustee and all creditors and interested parties, and
- a hearing is scheduled and at least 20 days notice is given to all parties.
- There is no filing fee and there are no other time constraints.

Another example we recently received was one document titled "Objection to Confirmation and Motion to Dismiss." This objection was filed timely before the confirmation hearing. It was not filed in time to schedule the request for dismissal so that it would be heard on or before the date of the confirmation hearing.

A couple months ago we had a similar document filed right before a hearing. The objection section of that document was considered at the hearing. The clerk's office "lost" the second part of the document for a couple months before it came to the top of a quality control "pending" report.

We also received a motion to enforce the automatic stay upon several interested parties. Some of the issues against some of the parties are bankruptcy-related and some may not be. It was difficult for the Court to sort through what could actually be heard and considered.

On occasion we receive motions that might include a request for relief from stay and for injunctive relief of some sort. While stay issues can be considered in motion form, injunctive relief requests must be brought to the Court's attention through an adversary proceeding.

We contact the moving party when a decision is made to not file a document and we always suggest that you refile your documents separately. Regrettably this delays the process. We recommend that if in doubt, you file two motions. As always, please call us if you have any procedural questions.



WWW.ndb.uscourts.gov

By Jim Snyder, Systems Manager

Are you one of our 2000 users using **PACER**? Are you tired of the same old text menu and the boring routine of getting information? We have good news for you. Our version of web pacer is now operational! As you might already know, pacer is an electronic public access service that allows users to obtain case and docket information. You can still reach our old system by dialing directly using communication software (such as ProComm Plus, pcAnywhere, or Hyperterminal). The cost for this service is still \$.60/minute. Now you can also retrieve case information on the Internet through **PACER-Net**. From your browser, (Netscape, Internet Explorer, or AOL) type in our web address and login. Pacer information is updated daily and is available to registered users at anytime. Check us out by pointing your browser to www.ndb.uscourts.gov or www.pacer.ndb.uscourts.gov.

All registered users for our dial-in system are now able to use our new web-based system. We think you'll find this web pacer easy to use. If you have a login for other Pacer systems around the country, call that agency to see if they have a version of web pacer running. Of course, you will be charged a \$.07/page fee for using this system, but you're getting more complete information without driving to the courthouse. The web PACER System offers electronic access to the following case information:

a listing of all parties and participants including judges, attorneys, and trustees, a chronology of dates of case events entered in the case record, a claims registry, and a listing of new cases each day in the bankruptcy court.

You will be billed on a quarterly basis for your transactions. You can enter a client code of your choosing each time you login to PACER. This will help manage your costs. The client code you enter will appear for each transaction on your quarterly statement. Generally, a page is defined as 54 lines of data. When charges are accrued, a transaction receipt will appear at the bottom of each web-based document, indicating the number of pages billed for that particular transaction. See below.

| PACER Service Center | | | |
|-----------------------------|---------------|---------------------|----------|
| Transaction Receipt | | | |
| 02/09/2000 13:39:53 | | | |
| PACER Login: | pa0000 | Client Code: | |
| Description: | docket report | Case Number: | 99-31128 |
| Billable Pages: | 2 | Cost: | 0.14 |

In the future, the Bankruptcy Court hopes to offer images of documents filed in our court. These images will be billed according to the number of pages scanned; therefore, each scanned page equals one billable page. Collections for pacer are still performed by the Pacer Service Center. You can find them on the World Wide Web at <http://www.pacer.psc.uscourts.gov>.

Should you have any questions you can contact the PACER Service Center, at (800) 676-6856.

Or write to:

PACER Service Center

P.O. Box 780549

San Antonio, TX 78278-0549

mail: pacer@aottd.uscourts.gov

REMI NDER

There are two sources currently available on the North Dakota Bankruptcy Web-Site (www.ndb.uscourts.gov), for searching cases. They are:

Judge Hill's Case Compendium: All bankruptcy-related decisions of U.S. Supreme Court, 8th Circuit, 8th Circuit Bankruptcy Appellate Panel, U.S. Bankruptcy Court for the District of North Dakota, and the U.S. District Court for the District of North Dakota, organized by topic going back to 1979 and updated monthly. This can be found under the "Chambers" Section of www.ndb.uscourts.gov.

Court Decision Retrieval System: We scan into the data base all written memorandum decisions and orders, both published and unpublished, issued by the U.S. Bankruptcy Court for the District of North Dakota. We do not scan in the many routine single-page orders that while dispositive of motions, are summary in nature and do not discuss substantive legal issues. Opinions are selected for publication only if they meet at least one of the following:

- Deals With Issues of First Impression
- Establishes, Alters, Modifies or Explains a Rule of Law
- Provides a Review of the Law
- Criticizes Existing Law
- Involves Unique Fact Situation
- Presents a Unique Holding
- Involves Newsworthy Cases

The Judge is the sole determiner of whether an opinion warrants publication in this system. **Please Note:** *This system is currently only available within the Quentin N. Burdick U.S. Courthouse, but will soon be available via our home page at www.ndb.uscourts.gov.*

NORTH DAKOTA BANKRUPTCY STATISTICS FOR YEAR ENDI NG 1999

| | <u>1998</u> | <u>1999</u> | <u>CHANGE</u> |
|-----------------------|-------------|-------------|---------------|
| Cases | 2180 | 2132 | -2% |
| Estates | 3089 | 3037 | -2% |
| Joint Cases | 909 | 905 | -.4% |
| Business Cases | 115 | 98 | -15% |
| Chapter 7 Cases | 2069 | 2003 | -3% |
| Chapter 11 Cases | 1 | 5 | 400% |
| Chapter 12 Cases | 32 | 34 | 6% |
| Chapter 13 Cases | 78 | 90 | 15% |
| Adversary Proceedings | 86 | 88 | 2% |

TELEPHONE APPEARANCES

The Bankruptcy Courtroom is equipped for parties to participate in courtroom hearings via telephone. This technology permits a remote attorney to be heard and hear everything going on in the courtroom and participate vocally. Requests to appear via telephone **MUST** be in writing. This is something attorneys may want to consider during times of inclement weather or other travel difficulties. **REMI NDER:** Under no circumstances will parties be allowed to present testimony or offer evidence via telephone.